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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116
RM 8535

REPLY COMMENTS

BELLSOUTH CORPORATION and
BELLSOUTH TELECOMMUNICATIONS, INC.

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SUMMARY

The Commission should adopt separate LNP cost recovery principles to ensure that the costs of LNP are borne by all carriers on a competitively neutral basis. These principles should affirm that the LNP cost recovery mechanism (1) does not impose a disproportionately greater burden on any one telecommunications carrier relative to another; (2) does not so distort telecommunications service prices so as to influence customer choice among alternative carriers; and (3) is characterized by administrative simplicity.

Having adopted the foregoing LNP cost recovery principles, the Commission should determine that all costs essential to making LNP work that are incurred by all carriers because of the LNP federal mandate, whether they are shared or carrier specific, represent the costs of implementing the federal LNP mandate as a whole and as such are to be borne by all carriers on a competitively neutral basis. The Commission should further determine that national pooling of the industry-wide Type 1 and Type 2 costs is the best way to ensure that the costs of LNP are borne by all carriers, and that all carriers share in the burden of recovering these costs from end users of telecommunications services through mandatory, but temporary, uniform, averaged and explicit end-user charges. In this way, the Commission will provide a cost recovery mechanism for federally mandated LNP that is characterized by administrative simplicity and which will minimize anticompetitive distortion of the terms on which rival firms compete in the telecommunications services market.

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BellSouth Corporation and BellSouth Telecommunications, Inc., by counsel, reply to the comments filed in response to the Further Notice of Proposed Rulemaking released in this proceeding on July 2, 1996.¹

INTRODUCTION

Congress and this Commission have directed that the public switched telephone network ("PSTN") be modified so as to accommodate long term database number portability ("LNP") in order that users of telecommunications services may be able to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another. 47 U.S.C. §§ 153(30), 251(b)(2); Further Notice *passim*. The term LNP, therefore, describes more than just a telecommunications service that ports numbers; rather it describes a government mandated, industry-wide effort that requires fundamental changes to the PSTN through the participation of the telecommunications industry as a whole in order for the technology to work.

¹*In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 (July 2, 1996)("Further Notice").

LNP in an economic sense constitutes an intervention in the telecommunications services market that threatens to distort the terms on which rival firms compete with each other. Recognizing the potential for distortion, Congress has required that the costs of LNP are to be borne by all carriers on a competitively neutral basis as determined by the Commission. 47 U.S.C. § 251(e)(2). Any LNP cost recovery mechanism is a concomitant burden of LNP intervention and should itself be administered in a way that does not distort the terms on which rival firms compete. In these reply comments, BellSouth demonstrates that the cost-recovery mechanism must be based on the fundamental principle that the industry-wide costs of LNP are borne, shared and recovered by the industry as a whole with a minimum of market distortion.

I. LONG TERM DATABASE NUMBER PORTABILITY REQUIRES DIFFERENT COST RECOVERY PRINCIPLES THAN THOSE ADOPTED BY THE COMMISSION FOR CURRENTLY AVAILABLE NUMBER PORTABILITY

The Commission's cost recovery principles for mandatory local exchange carrier ("LEC") provisioning of remote call forwarding ("RCF") and ("DID") are, as written, inappropriate for LNP. In order to comport with Congress's mandate of competitive neutrality, an LNP cost recovery mechanism (1) must not impose a disproportionately greater burden on any one telecommunications carrier relative to another; (2) must not so distort service prices so as to influence customer choice among alternative carriers; and (3) must be characterized by administrative simplicity.

The "currently available" number portability (RCF and DID) cost recovery principles are incompatible in the context of permanent LNP. RCF and DID, as the Commission recognized, are fundamentally different and have substantially different costs than LNP. The cost recovery principles set forth in the Further Notice were designed, in part, to incent LECs to implement

LNP, which is now mandatory. As applied by the Commission, the principles established for RCF and DID do not comport with the legislative mandate of competitive neutrality for LNP costs. Instead, they confer a competitive advantage on new entrants, result in confiscatory rate setting for intrastate services, and potentially abrogate carrier to carrier contracts.² As such, the principles developed for RCF and DID should not be applied to LNP.

The Florida Public Service Commission notes with respect to the second principle (competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal rate of return):

In a competitive environment, there is a fundamental premise that marginal service providers may not earn a normal return and may not be able to survive in the long run.³

Applied to LNP, this principle could result in requiring more efficient carriers to subsidize marginal service providers in order to guarantee a “normal return.”

Neither of the currently available number portability cost recovery principles ensure that telecommunications service prices will not be distorted in a way that will influence customer choices among alternative carriers. LNP implementation costs must be distributed in a way which neither deters, nor encourages, telecommunications customers to change providers, because customers would not be able to avoid paying for, or would not pay a lower portion of the cost of,

² Further Notice, Bell Atlantic Petition for Clarification and Partial Reconsideration (Aug. 26, 1996), pp. 11-14; BellSouth Petition for Reconsideration or Clarification (Aug. 26, 1996), pp. 1-10; Cincinnati Bell Petition for Reconsideration (Aug. 26, 1996) *passim*; GTE Petition for Clarification or Reconsideration (Aug. 26, 1996), pp. 11-12; SBC Petition for Reconsideration (Aug. 26, 1996) pp. 3-6).

³ Fla. PSC Comments at 2.

LNP implementation by changing providers.⁴ Finally, the Commission has determined that an “each carrier bears its own costs” approach comports with its RCF and DID competitive neutrality principles. As demonstrated in Section II below, such an approach is not competitively neutral when applied to LNP.

The Commission should therefore adopt separate cost recovery principles for LNP such that (1) the burden of all (industry-wide, both shared [Type 1] and carrier specific [Type 2]) LNP costs incurred because of the federal mandate are equitably distributed among all carriers and that the LNP cost recovery mechanism used to recover those costs does not impose a disproportionately greater burden on any one telecommunications carrier relative to another;⁵ (2) ensures that the cost recovery mechanism does not distort service prices so as to influence customer choice among alternative carriers;⁶ and (3) ensures that the LNP cost recovery mechanism is characterized by administrative simplicity.⁷

II. DIRECT CARRIER SPECIFIC COSTS ASSOCIATED WITH LONG TERM DATABASE NUMBER PORTABILITY MUST BE BORNE BY ALL CARRIERS ON A COMPETITIVELY NEUTRAL BASIS.

The comments overwhelmingly support the Commission’s initial categorization of LNP costs into three categories: shared, direct carrier specific and indirect carrier specific. Likewise, the comments unanimously support the Commission’s tentative conclusion that each carrier should bear its own costs that are not directly attributable to LNP. With shared costs, the

⁴ Cal. Dep. Consumer Affairs (“DCA”) Comments at 11-12; USTA Comments at 16.

⁵ Cincinnati Bell Comments at 6 (carriers must be able to recover all cost they incur to implement LNP); SBC Comments at 10.

⁶ Ameritech Comments at 7; Cincinnati Bell Comments at 6.

⁷ Bell Atlantic Comments at 3-4; GTE Comments at 14.

principle differences concern whether all carriers, or a subset of all carriers based on LNP participation, should bear this portion of the LNP burden.⁸ With direct carrier specific costs, the principle difference concerns whether each carrier should bear its own cost or whether carrier specific costs directly caused by LNP are among the costs that Congress has directed are to be borne by all carriers.⁹

The Commission should conclude that “competitive neutrality” requires that all carriers nationwide should bear the total LNP shared and direct costs. The law is explicit that these costs are to be borne by all carriers, and has not excluded any carrier from this mandate.¹⁰ Teleport correctly explains:

Number portability has now become a requirement of doing business for all providers. It stands to reason, therefore that all carriers should equitably share the burden of the costs for providing number portability. The Telecommunications Act of 1996 requires no less . . .

BellSouth parts company with Teleport and others who argue unconvincingly that the burdens to be borne by all carriers are only the shared costs (why would Congress mandate that shared costs be shared?) and not the millions that will have to be spent by incumbent LECs in order to ensure that LNP will even work.¹¹ It is not relevant to distinguish between the common

⁸ *Cf.* Teleport Communications Group Comments at 4 (all carriers should bear costs) *with* Telecommunications Resellers Association Comments at 5-7 (only LECs should fund LNP costs).

⁹ *Cf.* Winstar Communications Comments at 6 (individual carrier costs should not be included) *with* General Services Administration (“GSA”) Comments at 5 (all costs directly incurred by any party to implement and operate the LNP solution should be pooled and spread across all carriers according to an allocator); Fla. PSC Comments at 1-2.

¹⁰ 47 U.S.C. § 251(e)(2); Teleport Comments at 4.

¹¹ BellSouth estimates that its direct costs will approximate \$470 million. *See also* Sprint Comments at 3 (\$100 million in top 100 MSAs); U S West Comments at 3 (approximately \$400 million); NYNEX Comments at 2 (\$400 million) and GTE Comments at 1 (\$1.136 billion).

database costs and those associated with individual LECs' deployment of the capability to provide LNP because all of these costs "are necessary to achieve a common goal, which is to implement a competitively neutral long-term solution to the number portability problem."¹²

LNP cannot work without the full participation of incumbent LECs.¹³ Incumbent LECs cannot choose "not to play," and, as a practical matter, they cannot exit the market. If they could choose either option, LNP would not be technically achievable. Unfortunately, one consequence of the Commission's subdividing the cost of providing LNP into "shared" and "carrier-specific" cost categories is a tendency in the comments to overlook the fact that the carrier specific direct costs of any one carrier constitute just one part of the incremental costs of the federally mandated LNP arrangement as a whole. Indeed some comments refer to only shared costs as "industry-wide" when, in fact, all costs caused by the federal LNP mandate are "industry wide." It is fallacious and disingenuous to categorize carrier specific direct costs incurred solely as a result of the federal mandate, as MCI's lobbyists do, as "technical upgrades they'll [incumbent LECs] have to make anyway."¹⁴ The costs identified by the Commission and others in this proceeding as directly attributable to LNP would not be incurred in the absence of an LNP mandate.¹⁵ For these

¹² GSA Comments at 5.

¹³ For this reason, MFS's "airbag" hypothetical makes no sense in the context of a transitional regulated telecommunications market. MFS Comments at 4. MFS argues that Ford does not subsidize Toyota's costs of installing airbags in response to government safety regulations. This is true in an industry that, although individual manufacturers are subject to health, safety and environmental regulations, is not subject to the ubiquitous regulation of telecommunications common carriers and has no analog to LNP. If Ford chooses not to install airbags in its cars, it may be violating a federal regulation, but it does not mean that the Toyota airbag will not work.

¹⁴ *Phone Companies Call for Customer Surcharge*, Wall Street J., B6, Col. 3 (Sep. 13, 1996).

¹⁵ A number of comments demonstrate that the appropriate test for determining whether a cost is directly related to LNP is a "but for" test. GTE Comments at 5; GSA Comments at 2. *See also* Ameritech Comments at 3 (upgrades made for sole purpose of providing LNP); (Continued...)

reasons, a determination that the costs of number portability that are to be borne by all carriers do not include an incumbent LEC's direct costs to prepare the public switched telephone network for LNP cannot be competitively neutral or socially desirable. Such a determination will disadvantage incumbent LECs, and, although an incorrect measure as a matter of law, would not even comport with the Commission's cost recovery principles for "currently available" number portability.

III. USE OF A NATIONAL POOL IN ALLOCATING LONG TERM DATABASE NUMBER PORTABILITY COSTS IS CONSISTENT WITH CONGRESS'S MANDATE, AND A TEMPORARY, MANDATORY END USER CHARGE BASED ON A MEASURE OF CUSTOMER PERCEIVED USES OF TELECOMMUNICATIONS ACCESS LINES (THE "SBC PROPOSAL") IS THE MOST COMPETITIVELY NEUTRAL COST RECOVERY MECHANISM.

- A. The Commission Should Adopt A Mechanism Of Cost Allocation by Customer Usage.

BellSouth agrees, conceptually, with SBC Communications Inc.'s proposal to allocate LNP costs based upon an accounting of telecommunications sub-markets and customer-perceived uses of the local exchange access line and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge.¹⁶ Accordingly, BellSouth endorses SBC's approach as the most competitively neutral proposal advanced in any of the comments. Of course, the allocation method is necessarily arbitrary, as evidenced by SBC's subdivision of markets into neat "thirds" (local exchange service, intra LATA toll service and interLATA toll service), and the

NCTA/OPASTCO at 8; NYNEX Comments at 3 (test should be whether costs are caused by LNP). Applying this test, a number of direct carrier specific costs have been identified as being caused by the federal mandate and should therefore be added to the Commission's initial list of direct carrier specific costs. See Pacific Telesis Group Comments at 8-9 (LNP base feature enhancements, service control points, signaling system enhancements, trunking augmentation and rearrangement and switch capacity, upgrades to operational support systems and advancement costs); U S West Comments at 10-11 (unplanned upgrades, advancement costs).

¹⁶ SBC Comments at 7-16.

nomenclature adopted by SBC is fictional, but the concept is the least market distorting of all of the proposals put forth in this proceeding. Total nationwide access lines are a credible measure of the magnitude of the costs, while subdividing this measure into customer perceived uses of telecommunications services will result in an equitable distribution of costs across all carriers. Indeed, the essence of SBC's proposal is a recognition that end users perceive that they receive different types of services from different types of carriers. All these carriers, by federal mandate, should bear the cost burdens associated with LNP, including the burdens associated with cost recovery.

Revenue-based allocation mechanisms are clearly more susceptible to market distortion and manipulation than allocation mechanisms based on access lines. For this reason, and the fact that incumbent LECs by this measure will necessarily bear a disproportionate share of the costs of LNP in contravention of the Act, BellSouth agrees with those comments that demonstrate that the commission's gross revenues minus payments to other carriers measure is not competitively neutral.¹⁷ Proposals that advocate total telecommunications service revenues¹⁸ or gross revenues minus revenues paid to *and received from* other carriers¹⁹ are preferable to the Commission's proposal. Because usage services are relatively more price-elastic than subscriber access services, they are more susceptible to distortion, and the Commission should adopt an access line based allocation measure.²⁰ In the alternative, should the Commission determine that a revenue measure

¹⁷ See, e.g., Bell Atlantic Comments at 4-5.

¹⁸ Bell Atlantic Comments at 5; NYNEX Comments at 8-9.

¹⁹ Pacific Telesis Comments at 11.

²⁰ SBC Comments at 7-9; Sprint Comments at 7-8.

is appropriate, it should adopt either the retail service revenue measure or the revenue less payments made and revenues received measure.

B. A National Pool Comports With Competitive Neutrality.

In its initial comments, BellSouth advocated regional industry pools as the basis for a competitively neutral cost allocation and recovery mechanism for shared carrier costs associated with the installation and administration of the NPAC as well as for all direct carrier specific costs. Having considered the comments submitted in this proceeding, BellSouth continues to favor a pool as the basis of a competitively neutral cost recovery mechanism, but is persuaded by those commenters who advocate a national pool as opposed to a regional pool.²¹ A regional pool, though logically suggested by the Commission's adoption of a system of regional SMS databases to achieve LNP, would present unnecessary complications in the form of jurisdictional separations, territorial allocations, and enforcement oversight. A national pool, however, assures uniformity of treatment as well as administrative simplicity. The national pool should be administered by the number portability administrator (LNPA) designated by the North American Numbering Council ("NANC") and would remain in operation only for as long as all carriers have recovered their eligible costs, for three to five years.

The Commission should not be persuaded by arguments that pools are inconsistent with competitively neutral cost allocation as required by the Act. Such arguments ignore the fact that mandatory LNP is not something that arises out of a competitive market place, but is a regulatory intervention in the telecommunications services market designed to facilitate competition.

²¹ See GTE Comments at 12; CTIA Comments at 3 (advocating a nationwide cost recovery network).

Although it may be sound economic theory that “[s]ubsidies among competitors are incompatible with the competitive process and seriously impair incentives to minimize costs,” it is important to distinguish the theoretical constructs which ought to apply to a deregulated, free market, and the practical results of applying such theory to a transitional regulated market that is, in fact, subject to intensive reregulation.²² As the Florida Public Service Commission notes:

[Pooling] appears preferable to the first option which requires individuals carriers to bear their own costs . . . While pooling approaches can act to deter efficiency, we believe the risk is slight in this case. Whether the pooled costs are allocated based on some measure of revenues or subscriber lines, the incumbents will still pay a large percentage of these costs, and therefore, have an incentive to implement number portability in the most efficient manner.²³

In contrast to academic arguments and special interest advocacy, a number of comments offer cogent and pragmatic explanations, from a public interest perspective, as to why having each carrier bear its LNP costs does not comport with the Act’s requirement of competitive neutrality. The size of incumbent LECs’ wireline network is appreciably larger than any alternative LEC’s network.²⁴ The costs to be incurred by the incumbent LECs far exceed the costs to be incurred by anybody else.²⁵ As California DCA notes:

²² See, generally, Pacific Telesis Comments *passim*. On the one hand, Pacific Telesis suggests that pooling could provide incumbent LECs with a “cost advantage that could impede effective competition.” But in the same paragraph Pacific Telesis also states that pooling will relieve new entrants of their LNP burden, thus subsidizing *new entrants* at the expense of established carriers. Pacific Telesis Comments at 9, ¶ 14 (emphasis added). Pooling would therefore appear to provide advantages to both incumbent LEC and new entrant alike. This would seem to be competitively neutral.

²³ Fla. PSC Comments at 4-5.

²⁴ California DCA Comments at 10.

²⁵ *Infra*, n.3.

What is most significant is how that result affects consumers if ILECs²⁶ must absorb the full cost of establishing LNP in their networks, and if they lose customers to CLECs,²⁷ then the ILECs' remaining customers will be forced to bear a disproportionately large share of the cost of LNP, while those customers who change to a CLEC will bear a disproportionately smaller share of LNP costs because they will not have to pay for LNP implementation in the ILECs' large network.

Viewed in this way, it is difficult to conclude that a cost recovery approach in which the ILECs absorb the full costs of implementing LNP in their networks comports with the federal Act's "competitively neutral" requirement . . . There seems to be some justification for requiring the CLECs to bear not only their own costs to implement and provide LNP, but also for requiring the CLECs and their customers to bear some proportionate share of the ILECs' cost of implementing LNP.²⁸

Similarly, the Florida Public Service Commission recognizes that in the early stages of local competition, the incumbent local exchange carrier will incur a disproportionate amount of the cost, while the entrants will receive a disproportionate amount of the benefit.²⁹ Competitive neutrality must be measured by Congress's mandate that the costs of number portability be borne by all carriers in a regulated market undergoing transition, and not by an interpretation that assumes a market acting without governmental direction.

²⁶ Incumbent LECs.

²⁷ Competitive LECs.

²⁸ Cal. DCA Comments at 19-21.

²⁹ Fla. PSC Comments at 5.

C. Cost Recovery Should Be Accomplished Through a Temporary, Mandatory and Averaged Uniform End User Surcharge.

The comments make clear that the costs of provisioning LNP will be passed on in some way by carriers to their customers.³⁰ BellSouth has attempted to find a solution to LNP cost recovery that avoids the imposition of an end user charge. However, the comments in this proceeding demonstrate that incumbent LECs are limited by various regulatory plans, at the federal and state level, from raising prices for services.³¹ Nobody questions that incumbent LECs will be forced to spend, substantially more than other carriers to reconfigure the PSTN to accommodate LNP.³² BellSouth is now persuaded that the fairest way to ensure that all carriers bear the burdens caused by LNP is for the FCC to adopt LNP cost recovery principles that recognize a mandatory, but temporary, uniform and averaged end user surcharge as being consistent with Congress's goal of competitive neutrality.³³ Once the costs for implementing LNP are recovered, this charge would disappear. Once the charge disappears, each carrier would be responsible for bearing its ongoing costs of providing LNP through whatever manner that carrier deems to be efficient.³⁴

BellSouth appreciates the political inexpediency of advocating any sort of end user surcharge. Those who would turn Congress's mandate of competitive neutrality on its head have already exploited this inevitable approach to cost recovery in the court of public opinion.³⁵ Rival

³⁰ *E.g.*, AT&T Comments at 13-14, Time Warner Comments at n.12. Time Warner is wrong to state that the statute prohibits recovery from end user customers because "only carriers are obligated to bear the cost" of LNP. Time Warner Comments at 5-6.

³¹ GTE Comments at 8; U S West Comments at 15.

³² *Infra* nn. 3, 28.

³³ Bell Atlantic Comments at 9; GTE Comments at 4; NYNEX Comments at 12.

³⁴ Cal. DCA Comments at 14-15.

³⁵ *Phone Companies Call for Customer Surcharge*, Wall Street J., B1 (Sep. 13, 1996).

firms will continue to fan the fires of public opinion in order to achieve a politically popular decision in the context of this proceeding that would nevertheless be inconsistent with the Act, with fairness and with competitive neutrality. But the incumbent LECs, assuming they have the regulatory flexibility to do so, cannot be the only ones who have to bear the bad news to customers in a competitively neutral system.

All elements of an LNP cost recovery mechanism, including end user billing, are burdens of federal LNP intervention in the telecommunications services market, and should not be disproportionately distributed among rival and competing firms. Requiring all carriers to participate in the cost recovery process through a rational allocation of both Type 1 and Type 2 costs, and through a concomitant end user charge based on the same allocator, is the most competitively neutral strategy. As several comments have suggested, the bill should be identified as a surcharge required by federal law in order to provide LNP. In this way, the “unpleasantness” of the notification in the customer’s bill,³⁶ is not associated, in the public’s mind, with any particular class of carriers.

CONCLUSION

The Commission should adopt separate LNP cost recovery principles to ensure that the costs of LNP are borne by all carriers on a competitively neutral basis. These principles should affirm that the LNP cost recovery mechanism (1) does not impose a disproportionately greater burden on any one telecommunications carrier relative to another; (2) does not so distort telecommunications service prices so as to influence customer choice among alternative carriers; and (3) is characterized by administrative simplicity. National pooling of Type 1 and Type 2

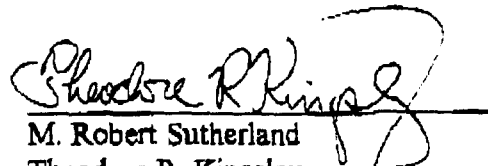
³⁶ *Id.* at B6, Col. 3.

costs, and recovery through a mandatory, but temporary uniform and averaged end user LNP charge best comports with the foregoing LNP cost recovery principles. BellSouth endorses SBC Communications Inc.'s specific LNP cost recovery proposal.

Respectfully submitted,

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I hereby certify that I have on this 16th day of September, 1996 served all parties to this action with a copy of the foregoing REPLY COMMENTS by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties listed on the attached service list.


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